

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202003552	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/21/2020 1:30 PM, Monday, 05/25/2020 6:00 PM	Location of Incident: Outside of § 87(2)(b) in the Bronx	Precinct: 46	18 Mo. SOL 11/21/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 05/26/2020 11:06 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 05/26/2020 11:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Eric Bernard	19619	958308	046 PCT
2. POM Joseph Iobbi	21087	964067	046 PCT
3. POM Christophe Chin	20543	958402	WARRSEC
4. POM Agon Pukaj	03404	962029	046 DET
5. SGT Eloise Walter	00588	956327	034 DET

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Chin	Abuse: On May 21st, 2020, Police Officer Christopher Chin stopped § 87(2)(b)	
B.POM Eric Bernard	Abuse: On May 21st, 2020, Police Officer Eric Bernard stopped § 87(2)(b)	
C.POM Joseph Iobbi	Abuse: On May 21st, 2020 Police Officer Joseph Iobbi stopped § 87(2)(b)	
D.POM Christophe Chin	Abuse: On May 21st, 2020, Police Officer Christopher Chin frisked § 87(2)(b)	
E.POM Christophe Chin	Abuse: On May 21st, 2020, Police Officer Christopher Chin searched § 87(2)(b)	
F.POM Joseph Iobbi	Abuse: On May 21st, 2020, Police Officer Joseph Iobbi searched § 87(2)(b) personal property.	
G.POM Christophe Chin	Abuse: On May 21st, 2020 Police Officer Christopher Chin threatened to arrest § 87(2)(b)	
H.SGT Eloise Walter	Abuse: On May 25th, 2020, Sergeant Eloise Walter stopped § 87(2)(b)	
I.POM Eric Bernard	Abuse: On May 25th, 2020, Police Officer Eric Bernard stopped § 87(2)(b)	
J.POM Christophe Chin	Abuse: On May 25th, 2020, Police Officer Christopher Chin stopped § 87(2)(b)	
K.POM Christophe Chin	Abuse: On May 25th, 2020 Police Officer Christopher Chin frisked § 87(2)(b)	
L.POM Christophe Chin	Abuse: On May 25th, 2020 Police Officer Christopher Chin searched § 87(2)(b)	
M.SGT Eloise Walter	Abuse: On May 25th, 2020 Sergeant Eloise Walter frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
N.SGT Eloise Walter	Abuse: On May 25th, 2020 Sergeant Eloise Walter searched § 87(2)(b)	
O.POM Eric Bernard	Discourtesy: On May 25th, 2020, Police Officer Eric Bernard spoke discourteously to § 87(2)(b)	
P.POM Eric Bernard	Abuse: On May 25th, 2020 Police Officer Eric Bernard searched § 87(2)(b) recording device.	
Q.POM Eric Bernard	Abuse: On May 25th, 2020, Police Officer Eric Bernard threatened to arrest § 87(2)(b)	
R.POM Eric Bernard	Abuse: On May 25th, 2020 Police Officer Eric Bernard threatened to take enforcement action that involved an abuse of discretion or authority against § 87(2)(b)	
S.SGT Eloise Walter	Abuse: On May 25th, 2020 Sergeant Eloise Walter failed to provide § 87(2)(b) with a business card.	
T.POM Eric Bernard	Abuse: On May 25th, 2020 Police Officer Eric Bernard failed to provide § 87(2)(b) with a business card.	
U.POM Christophe Chin	Abuse: On May 25th, 2020 Police Officer Christophe Chin failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
2E.POM Eric Bernard	Untruthful Stmt.: Police Officer Eric Bernard provided a misleading official statement to the CCRB.	
2F.POM Christophe Chin	Untruthful Stmt.: Police Officer Christophe Chin provided a misleading official statement to the CCRB.	

## Case Summary

On May 26<sup>th</sup>, 2020, the CCRB received the following website complaint from § 87(2)(b) [BR 1].

On May 21<sup>st</sup>, 2020, at about 2:15 p.m., Police Officers Eric Bernard, Joseph Iobbi, and Christopher Chin, all assigned at the time to the 46<sup>th</sup> Precinct anti-crime team, allegedly stopped § 87(2)(b) [Allegations A – C: Abuse of Authority – Stop, § 87(2)(g) as he spoke with a friend on the grounds of the § 87(2)(b) (§ 87(2)(b) in the Bronx, where § 87(2)(b) resides. It is alleged that PO Chin questioned § 87(2)(b) about the contents of a black shopping bag he was holding, and then frisked and searched § 87(2)(b) pants pockets [Allegation D: Abuse of Authority – Frisk, § 87(2)(g) Allegation E: Abuse of Authority – Search of person, § 87(2)(g) According to § 87(2)(b) PO Iobbi then searched the black shopping bag that § 87(2)(b) was holding [Allegation F: Abuse of Authority – Search of personal property, § 87(2)(g) and discovered a quantity of marijuana therein. Allegedly, Police Officer Chin threatened to arrest § 87(2)(b) both for possession of marijuana and for an outstanding bench warrant, unless he provided information regarding criminal activity in the area [Allegation G: Abuse of Authority - Threat of Arrest, § 87(2)(g) § 87(2)(b) was let go without a summons. Police Officer Chin or Police Officer Bernard called § 87(2)(b) minutes after the encounter.

§ 87(2)(b) changed his phone number and remained in his apartment for the next three days to avoid any further interactions with the officers. At about 6:00 p.m. on May 25<sup>th</sup>, 2020, § 87(2)(b) walked out of § 87(2)(b). He saw an unmarked police vehicle -- occupied by PO Bernard and PO Chin, as well as Sgt. Eloise Walter and Police Officer Agon Pukaj, both assigned to the 46<sup>th</sup> Precinct anti-crime team -- outside of the building. § 87(2)(b) who did not recognize the police car as such, walked in the opposite direction of the vehicle, toward the rear of § 87(2)(b). Sgt. Walter and Officers Bernard, Chin, and Pukaj, followed § 87(2)(b) as he walked along an underpass beneath the building, and stopped him [Allegations H – J: Abuse of Authority - Stop, § 87(2)(g) PO Chin frisked and searched § 87(2)(b) [Allegation K: Abuse of Authority – Frisk, § 87(2)(g) Allegation L: Abuse of Authority – Search, § 87(2)(g) Allegation M (Sgt. Walter): Abuse of Authority – Frisk, § 87(2)(g) Allegation N (Sgt. Walter), Abuse of Authority – Search, § 87(2)(g) Among other items, PO Chin removed a knife and a cellphone from § 87(2)(b) pockets. He handed the cellphone to PO Bernard. At some point, PO Bernard allegedly said to § 87(2)(b) “you blocked my number, you really fucked up” [Allegation O: Discourtesy – Word, § 87(2)(g) PO Bernard then demanded the phone’s passcode from § 87(2)(b) When § 87(2)(b) told him the code, PO Bernard accessed the password-protected contents of the cellphone and entered his phone number into § 87(2)(b) contacts list [Allegation P: Abuse of Authority – Search of Electronic Device, § 87(2)(g) Allegedly, PO Bernard told § 87(2)(b) that he would come back in two hours, and that, if § 87(2)(b) did not provide information regarding criminal activity at that time, he would be arrested [Allegation Q: Abuse of Authority – Threat of Arrest, § 87(2)(g) PO Bernard also allegedly threatened to plant the knife that PO Chin seized from § 87(2)(b) at a crime scene, or charge § 87(2)(b) with using the knife to commit a violent crime [Allegation R: Abuse of Authority – Other (Threat of Enforcement Action), § 87(2)(g) § 87(2)(b) was let go without a summons.

None of Sgt. Walter, PO Bernard, or PO Chin offered a Right to Know Act business card, as required under the Patrol Guide [Allegations S – U: Abuse of Authority – Failure to provide RTKA card, § 87(2)(g) § 87(2)(g), § 87(4-b)

Sgt. Walter made a non-time-stamped entry reading “§ 87(2)(b) 91 [non-crime corrected]” in her memo book. Neither PO Bernard nor PO Chin prepared memo book entries regarding the incident

§ 87(2)(g), § 87(4-b)

PO Bernard and PO Chin falsely testified that they did not recall the incident [**Allegations AE and AF: Untruthful Statements – Misleading Statement**, § 87(2)(g)]

The CCRB is in possession of seven CCTV videos that each captures part of the incident [**BR 2**].

**Allegation A: Abuse of Authority – On May 21<sup>st</sup>, 2020 Police Officer Christopher Chin stopped** § 87(2)(b)

**Allegation B: Abuse of Authority – On May 21<sup>st</sup>, 2020 Police Officer Eric Bernard stopped** § 87(2)(b)

**Allegation C: Abuse of Authority - On May 21<sup>st</sup>, 2020 Police Officer Joseph Iobbi stopped** § 87(2)(b)

**Allegation D: Abuse of Authority - On May 21<sup>st</sup>, 2020 Police Officer Christopher Chin frisked** § 87(2)(b)

**Allegation E: Abuse of Authority - On May 21<sup>st</sup>, 2020 Police Officer Christopher Chin searched** § 87(2)(b)

**Allegation F: Abuse of Authority – On May 21<sup>st</sup>, 2020 Police Officer Joseph Iobbi searched** § 87(2)(b) **personal property.**

**Allegation G: Abuse of Authority – On May 21<sup>st</sup>, 2020 Police Officer Christopher Chin threatened to arrest** § 87(2)(b)

In the early afternoon of May 21<sup>st</sup>, 2020, § 87(2)(b) was having a casual conversation with his friend § 87(2)(b) on the grounds of § 87(2)(b) (§ 87(2)(b) in the Bronx, where both § 87(2)(b) and § 87(2)(b) reside. § 87(2)(b) refused to cooperate with the investigation for fear of police retaliation.) Surveillance footage [**BR 3**], at 00:02, shows § 87(2)(b) – wearing a red sweatshirt, black vest, and durag -- joining § 87(2)(b) at the top of a set of stairs adjacent to East 183<sup>rd</sup> Street. (This staircase runs between Webster Avenue and a driveway outside of § 87(2)(b). For approximately the next two minutes, § 87(2)(b) and § 87(2)(b) stand beside one another and appear to converse. § 87(2)(b) is seen holding a black shopping bag. § 87(2)(b) stated during his CCRB interview [**BR 4**] that this bag contained a quantity of marijuana that, he believed, was legal to possess for personal use. There was nothing about the bag's appearance, § 87(2)(b) stated, that indicated it contained contraband. In his pants pockets § 87(2)(b) had cash, keys, and some credit cards. There was nothing else on his person.

At approximately 01:37 in the video cited above, an unmarked black police vehicle is seen making a right hand turn from Webster Avenue onto 183<sup>rd</sup> Street. The vehicle then stops nearby § 87(2)(b). At approximately 02:04, § 87(2)(b) is seen walking in the direction of the vehicle. § 87(2)(b) alleges that, from within the vehicle, PO Chin asked him what was inside of his shopping bag. § 87(2)(b) asked, "what's the reason you're stopping me, officer?" PO Chin again asked what was in § 87(2)(b) shopping bag, and stated that he was looking only for guns, not drugs. When § 87(2)(b) asked PO Chin for a second time why he was being stopped, PO Chin stated "you're making this harder than it needs to be," and exited the vehicle along with PO Bernard and PO Iobbi. None of this interaction is captured by surveillance footage. During his CCRB interview [**BR 5**], PO Bernard denied having any recollection of the encounter. PO Iobbi and PO Chin, however, respectively acknowledged making a "stop" and an "inquiry" during their CCRB interviews [**BR 6 and 7**]. PO Iobbi stated that the black Ford Taurus seen in the clip cited above resembles the vehicle he used on May 21<sup>st</sup>, 2020. PO Iobbi stated that he did not recall the exact location of the stop, though, and denied recalling any details of the encounter. PO Chin stated that he was inside of his RMP when he first observed § 87(2)(b) who he did not know or

recognize. He could not recall what drew his attention to § 87(2)(b). He and PO Bernard exited the vehicle and approached § 87(2)(b); he could not explain why. PO Chin, who characterized the encounter as an inquiry at one point in his interview, and as a stop at another point, could not recall whether he suspected § 87(2)(b) of any crimes.

§ 87(2)(b) alleged that Officers Iobbi, Bernard, and Chin surrounded him after exiting their vehicle. One of the officers asked for § 87(2)(b) identification, which he provided. A warrant audit record [BR 8] shows that PO Iobbi checked § 87(2)(b) name for warrants, which would have yielded an outstanding bench warrant [BR 26], issued because § 87(2)(b) having been convicted of disorderly conduct, had not paid a fifty dollar fine. PO Chin then allegedly frisked § 87(2)(b) and searched his pants pockets. Without permission, PO Iobbi allegedly searched § 87(2)(b) shopping bag, discovered the marijuana inside, and asked § 87(2)(b) how much it was worth. Surveillance footage does not capture PO Iobbi searching § 87(2)(b) bag but may show him holding the bag. Between 03:17 and 03:23 in the clip cited above [BR 3], one of the officers appears to be holding a black shopping bag, identical to the bag that § 87(2)(b) is seen holding before the encounter. This officer appears to have a slimmer build than Officer Bernard – who is 5'11" and 300 pounds – and is not PO Chin, who is African American. After PO Iobbi discovered the marijuana, PO Chin allegedly told § 87(2)(b) that he would arrest him, both for possession of marijuana and for his outstanding bench warrant, if he did not, within the next two hours, provide the officers with information about criminal activity in the area. PO Chin then asked for § 87(2)(b) phone number and threatened to arrest § 87(2)(b) if he refused to provide it. After § 87(2)(b) told the officer his phone number, PO Chin stated “you have two hours” and admonished § 87(2)(b) to pick up his cell phone if he called. § 87(2)(b) was then let go. He received a call minutes later from either § 87(2)(b) or § 87(2)(b). PO Bernard acknowledged during his interview that the second number is his department cellphone line; the first number is not a department line according to records from the NYPD Information and Technology Bureau. § 87(2)(b) picked up and spoke with an officer who he believed was PO Bernard. § 87(2)(b) told the officer that he had no information to share and asked why he was being “extorted.” The officer allegedly replied “two hours” and disengaged. § 87(2)(b) then called his phone carrier, T-Mobile, and changed his number. T-Mobile did not fulfill the investigation’s subpoena for § 87(2)(b) call records on May 21<sup>st</sup>, 2020.

§ 87(2)(b) denied during his interview that he has ever wanted or been willing to provide information to the NYPD. According to PO Chin, though, § 87(2)(b) expressed an interest in providing information about criminal activity and was generally a willing participant in the encounter. He denied any recollection of questioning § 87(2)(b) except about a bruise on § 87(2)(b) face. PO Bernard also had a “brief conversation” with § 87(2)(b) about providing information. PO Chin stated he did not provide any other details about PO Bernard’s involvement. PO Chin stated that he “possibly” frisked and searched § 87(2)(b). § 87(2)(b) did not appear to be armed or to pose a danger, as far as PO Chin could recall. PO Chin denied any recollection of § 87(2)(b) having a shopping bag. The interaction concluded with § 87(2)(b) “exchanging phone numbers” with PO Bernard or himself, PO Chin stated. As noted above, PO Bernard denied any recollection of the incident. He did acknowledge, however, that as a 46<sup>th</sup> Precinct anti-crime officer, he sometimes solicited information from civilians and potential informants. If someone showed interest in becoming an informant, he testified, he would give their contact information to the Precinct field intelligence officer, who would then be responsible for developing a relationship with the civilian.

§ 87(2)(g) In his testimony, without being asked, § 87(2)(b) volunteered that he had a somewhat large quantity of marijuana during both incidents, and, during the May 25<sup>th</sup> incident, had an illegal knife. Furthermore, as discussed below, § 87(2)(b) statement regarding the latter incident is highly consistent with the video evidence. However, there is no video or documentary evidence to corroborate § 87(2)(b) testimony regarding the events on May 21<sup>st</sup>. Evidently, PO Chin and PO Bernard had a



discussion with § 87(2)(b) about providing information regarding criminal activity. However, the nature of the encounter cannot be further established. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation H: Abuse of Authority – On May 25<sup>th</sup>, 2020 Sergeant Eloise Walter stopped § 87(2)(b).**

**Allegation I: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Eric Bernard stopped § 87(2)(b)**

**Allegation J: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Christopher Chin stopped § 87(2)(b)**

**Allegation K: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Christopher Chin frisked § 87(2)(b)**

**Allegation L: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Christopher Chin searched § 87(2)(b)**

**Allegation M: Abuse of Authority – On May 25<sup>th</sup>, 2020 Sergeant Eloise Walter frisked § 87(2)(b)**

**Allegation N: Abuse of Authority – On May 25<sup>th</sup>, 2020 Sergeant Eloise Walter searched § 87(2)(b)**

**Allegation**

**Allegation O: Discourtesy – On May 25<sup>th</sup>, 2020 Police Officer Eric Bernard spoke discourteously to § 87(2)(b)**

**Allegation P: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Eric Bernard searched § 87(2)(b) electronic device.**

**Allegation Q: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Eric Bernard threatened to arrest § 87(2)(b)**

**Allegation R: Abuse of Authority – On May 25<sup>th</sup>, 2020 Police Officer Eric Bernard threatened to take enforcement action that involved an abuse of discretion or authority against § 87(2)(b)**

During a second CCRB interview [BR 9], § 87(2)(b) stated that the incident on May 21<sup>st</sup> caused him to fear for his safety. Over the next three days, he remained inside of his apartment to avoid any further interactions with the officers. On May 25<sup>th</sup>, 2020, at about 6 p.m., § 87(2)(b) left § 87(2)(b). He stated that he had two eighths (7 grams) of marijuana in each of his jacket pockets, all for personal use. § 87(2)(b) also had what he characterized as a “hunting knife” in his front right pants pocket; the knife had approximately a six-inch handle and an eight inch blade. The knife did not cause a bulge and was not protruding from his pants pocket. § 87(2)(b) stated he believed no one could have discerned the knife’s outline in his pocket.

At 00:14 in a video consisting of seven CCTV clips, synchronized and concatenated in InputAce [BR 10], § 87(2)(b) is seen speaking with an apparent acquaintance in the lobby of § 87(2)(b). At 00:30, as § 87(2)(b) walks toward the exit, a silver unmarked RMP is seen driving past the building entrance. § 87(2)(b) testified that he noticed the vehicle but did not recognize it as a police vehicle. Between 00:38 and 00:49 in the video cited above, § 87(2)(b) is seen exiting, and then walking underneath, his building. Between 00:49 and 00:56, Officer Chin and Sgt. Walter exit the RMP. The RMP – driven by PO Pukaj, according to his testimony [BR 11] – follows the officers as they walk toward the underpass. At 01:00, § 87(2)(b) turns onto a path that runs behind § 87(2)(b). PO Chin and Sgt. Walter begin to run after him. Sgt. Walter, PO Chin, and PO Bernard all denied having a recollection of the incident. PO Pukaj initially testified that he did not recall the incident. After watching two and a half minutes of the video cited above, his only

recollection was that he and his partners had observed § 87(2)(b) lighting a marijuana cigarette or cigar after exiting his building, and that this was the basis for the encounter with § 87(2)(b). This is contradicted by the footage, which shows that § 87(2)(b) was holding his phone with both hands as he exited the building.

At 01:03 § 87(2)(b) is seen walking on a path at the rear of § 87(2)(b). PO Chin and Sgt. Walter are running after him. The RMP stops near the foot of the path at 01:10. At 01:14, § 87(2)(b) turns toward PO Chin and then stops walking. § 87(2)(b) stated that the officers almost immediately took his phone from his hands. At 01:20, PO Chin appears to grasp § 87(2)(b) cellphone. The phone cannot be seen for the next fifteen seconds, as PO Chin's back obstructs the camera's line of sight. At ~ 01:36, PO Chin is seen holding what appears to be a cellphone. (Note that at 01:16, PO Chin appears to place his own cellphone in his pocket; he is not thereafter seen removing his phone from the pocket.) Officer Bernard enters the frame at about 01:28. He leans in toward § 87(2)(b) at 01:33, and then appears to be saying something to § 87(2)(b). § 87(2)(b) stated that PO Bernard told him "you blocked my number; you really fucked up." Meanwhile, beginning at 01:33, PO Chin briefly frisks, and then enters, § 87(2)(b) right jacket pocket. He removes his hand from this pocket at 01:48. At 01:49, PO Chin looks up, as though to see if there are any CCTV cameras in the area. (PO Bernard does the same thing at 01:51.) Between 01:53 and 01:58, PO Chin apparently frisks or searches the inside of § 87(2)(b) jacket. His hands are, however, obstructed by his back during this period. Beginning at 02:06, PO Chin apparently continues to frisk or search § 87(2)(b). Again, his hands are obstructed. At 02:15, PO Chin is seen removing from § 87(2)(b) pocket what is apparently his "hunting knife." He passes the knife to PO Pukaj at 02:21, while escorting § 87(2)(b) toward a wall. § 87(2)(b) stated that the officers confiscated the knife. Consistently, PO Pukaj is seen to be in possession of the knife at 04:29, as he removes it from his crotch area.) As § 87(2)(b) stands against the wall, PO Chin continues to search him, removing an unidentified object at 02:29, and entering § 87(2)(b) right pants pocket – without first patting it down – at 02:32. PO Chin could not describe any basis for the encounter during his interview. PO Chin was presented with footage of the incident and acknowledged there are no outward indications that § 87(2)(b) is armed or otherwise dangerous. He could not provide any reasons for frisking or searching § 87(2)(b).

At 02:10, PO Chin apparently passes § 87(2)(b) cellphone to PO Bernard. PO Bernard, according to § 87(2)(b), demanded the phone's passcode. PO Bernard is seen looking at § 87(2)(b) phone beginning at 02:33. He appears to say something at 02:28, and § 87(2)(b) turns his head toward the officer. § 87(2)(b) at first refused to give PO Bernard his passcode, he stated, but provided it when the officer aggressively stated "give me your passcode." He did not see PO Bernard enter the passcode into his phone. § 87(2)(b) nevertheless concluded the officer had accessed the phone because there was a new number in his contact list when PO Bernard returned the phone at the end of the encounter. PO Bernard apparently enters the passcode into § 87(2)(b) phone at 02:46 and is seen typing something on the phone at 02:57. He continues to look at password-protected contents of the phone through 03:30 and is seen manipulating through various pages on the phone. He begins speaking to § 87(2)(b) at 03:30. At 03:48, he acts as though he is returning § 87(2)(b) phone but withholds it when § 87(2)(b) reaches for it. He finally returns the phone at 04:04. § 87(2)(b) stated that PO Bernard threatened to arrest him for his outstanding warrant, as well as for marijuana possession. Referring to § 87(2)(b) hunting knife, PO Bernard also threatened that he would arrest § 87(2)(b) for a fabricated or actual knife-related crime that § 87(2)(b) had not committed. PO Bernard said that all of this would happen if § 87(2)(b) did not provide the officers with information within the next two days. PO Bernard is seen looking at his watch at 04:11. He then shows the watch to § 87(2)(b) and points at it while saying something. § 87(2)(b) then gathers his belongings and walks away.

Under NYPD PG 212.11, a Terry Stop or level 3 encounter is any encounter between a

civilian and a uniformed member of the service in which a reasonable person would not feel free to disregard the officer and walk away. A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal law misdemeanor. The officer may frisk the person, if the officer has reasonable suspicion that the person is armed and dangerous. A frisk may not be conducted to discover evidence or the proceeds or instrumentalities of a crime. The police officer may seek consent to search. The consent must be voluntarily given. When a frisk reveals an object that the member of the service reasonably suspects may be a weapon, the member of service may search only those interior portions of the stopped person's clothing to remove the weapon. NYPD Patrol Guide Procedure 212.11 [BR 12].

In *Riley v. California*, the Supreme Court addressed two separate instances of police accessing a defendant's cellphone without a warrant. In one case, officers arrested the respondent and seized his cellphone at the police station. Noticing that the phone was receiving multiple calls from a source identified as "my house" on its external screen, the officers opened the phone and accessed its call log. The Court first ruled that the police had *searched* Wurie's phone and went on to hold that, before searching a cellphone, police must get a warrant. *Riley v. California*, 573 U.S. 373 [BR 13].

In *People v. Flynn*, the court ruled that consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. In assessing the voluntariness of a defendant's consent, the totality of the circumstances must be considered, including whether the defendant was in custody or under arrest, whether the defendant was confronted by a large number of police agents, whether the defendant had been evasive or uncooperative prior to giving consent, the past experience of the defendant in dealing with law enforcement, and whether the defendant was advised of the right to refuse consent. *People v. Flynn*, 165 A.D.3d 973 [BR 14].

Police Officer Pukaj testified that the officers stopped § 87(2)(b) because they saw him lighting a marijuana cigarette or cigar after exiting § 87(2)(b). This is contradicted by the video evidence. The other officers testified that they did not recall their reason for stopping § 87(2)(b). PO Bernard and PO Chin would have known at the time that there was a bench warrant for § 87(2)(b) arrest, given that PO Iobbi audited § 87(2)(b) for warrants during the May 21<sup>st</sup> incident. § 87(2)(g)

The video evidence shows that Police Officer Chin conducted a frisk and full-blown search of § 87(2)(b). § 87(2)(b) acknowledged that he had a knife on his person. The knife was concealed, though, according to § 87(2)(b) and did not cause a bulge or protrude from his clothing. The footage does not show any indications that § 87(2)(b) is armed. In any case, PO Chin did not find the knife until after he had already extensively frisked and searched § 87(2)(b) and found no weapons. Furthermore, PO Chin acknowledged that the footage showed no indications that § 87(2)(b) was armed and dangerous and could not provide any reasons for frisking or searching him. There is no evidence, then, that PO Chin entertained a reasonable suspicion that § 87(2)(b) had a weapon. Footage shows that PO Chin searched § 87(2)(b) before frisking him. Thus, PO Chin clearly did not search § 87(2)(b) after feeling an object that he reasonably suspected to be a weapon. § 87(2)(g)

§ 87(2)(g) § 87(2)(g)

§ 87(2)(g)



§ 87(2)(g)

§ 87(2)(b) testified that PO Chin took his phone at the beginning of the stop, against his will, and that PO Bernard later demanded his passcode. He originally refused to provide it but succumbed when PO Bernard aggressively demanded the passcode a second time. The video evidence shows that PO Chin seized § 87(2)(b) cellphone seconds into the encounter. He later gave the phone to PO Bernard. This was clearly all done without § 87(2)(b) consent. § 87(2)(g)

§ 87(2)(b) apparently provided his password to PO Bernard while against a wall, § 87(2)(g). Generally, the encounter § 87(2)(g) intimidating, especially in light of the encounter on May 21<sup>st</sup>, which § 87(2)(b) described as threatening and coercive. It follows that, even if § 87(2)(b) had given PO Bernard permission to search his cellphone – which is not supported by the evidence § 87(2)(g)

§ 87(2)(b) Consent is nullified when it results either from illegal police actions or coercion. § 87(2)(g)

The footage of PO Bernard pointing at his watch while speaking with § 87(2)(b) is generally consistent with indicating a period of time in which § 87(2)(b) needed to provide information, to avoid arrest. If PO Bernard did threaten to arrest § 87(2)(b) for a knife-related crime he did not commit, that would have been illegal, especially given that PO Chin discovered § 87(2)(b) knife § 87(2)(g). However, the video evidence alone cannot corroborate § 87(2)(b) testimony that PO Bernard threatened to frame him for a crime.

§ 87(2)(g)

**Allegation S: Abuse of Authority – Sergeant Eloise Walter failed to provide a Right to Know business card to § 87(2)(b)**

**Allegation T: Abuse of Authority – Police Officer Eric Bernard failed to provide a Right to Know business card to § 87(2)(b)**

**Allegation U: Abuse of Authority – Police Officer Christopher Chin failed to provide a Right to Know Act business card to § 87(2)(b)**

§ 87(2)(g), § 87(4-b)

Video evidence shows that none of the officers provided Right to Know business cards to § 87(2)(b) at the conclusion of the encounter. There is no evidence that there were exigent circumstances that made it impractical to provide cards. None of the officers made a body-worn camera recording during the encounter. Sgt. Walter was the only involved member of service that made a memo book entry regarding the incident. This entry does not have a timestamp and reads simply “§ 87(2)(b) 91.” (Sgt. Walter testified during her CCRB interview that she did not know what the entry referred to.) PO Bernard, PO Chin, and PO Pukaj’s memo books [BR 15, 16, and 17] show that they did not make an entry. None of the officers prepared a stop and frisk report, NYPD records show [BR 26].

Under NYPD PG 212-123, officers must activate their body-worn cameras prior to engaging in or assisting other uniformed members of service with interactions with persons suspected of criminal activity, as well as a search of an individual or their belongings. Officers are prohibited from activating their body-worn cameras while speaking with a current or potential confidential informant. NYPD Patrol Guide Procedure 212.123 [BR 18].

Under NYPD AG 304.11, except in cases when a summons is issued or an arrest is made, an officer must issue a business card at the conclusion of law enforcement encounters including non-custodial questioning of individuals suspected of criminal activity, a stop, frisk, or a search of persons or property. NYPD Administrative Guide 304.11 [BR 19].

Under NYPD PG 212.08, officers must record daily activities, including assignments received and information pertinent to an assignment (e.g. action taken, etc...), and any tasks performed. NYPD Patrol Guide Procedure 212.08 [BR 20].

Video evidence shows that Sgt. Walter, PO Bernard, and PO Chin all failed to provide Right to Know business cards to § 87(2)(b). There is no evidence of any exigent circumstances that would have made it impractical to issue these cards. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

**Allegation AE: Untruthful Statements – Police Officer Eric Bernard provided a misleading official statement to the CCRB**

**Allegation AF: Untruthful Statement – Police Officer Christopher Chin provided a misleading official statement to the CCRB**

PO Bernard and PO Chin apparently tried to conceal the encounter on May 25<sup>th</sup>. (Given the investigation’s failure to determine the nature of the incident on May 21<sup>st</sup> -- and in turn, what a reasonable officer in those circumstances would be expected to recall months later -- allegations of

misleading statement are pleaded only in relation to the May 25<sup>th</sup> incident. The officers' testimony regarding the May 21<sup>st</sup> incident is mentioned below only so far as it may relate to their recollection of the May 25<sup>th</sup> incident.) Neither officer made body-worn camera recordings during, or made memo book entries regarding, the incident. Furthermore, the officers did not provide Right to Know business cards to § 87(2)(b) or prepare a stop report. In footage of the incident, both PO Chin and PO Bernard appear to check the area of the stop for CCTV cameras.

PO Bernard was interviewed on January 19<sup>th</sup>, 2021, approximately eight months after his two encounters with § 87(2)(b). He denied that he had any recollection of the incident on May 25<sup>th</sup>. He further denied that he was familiar with § 87(2)(b) even after he was presented with § 87(2)(b) bench warrant. PO Bernard was presented with footage of the incident on May 25<sup>th</sup> which shows the encounter from a different and more obstructed line of sight than in the last clip of the concatenated video cited above. (At the time of the interview, the clip was unknown to the investigation.) PO Bernard acknowledged that the footage depicted himself and his partners but continued to maintain that he had no recollection of the incident. In response to questions regarding specific allegations as well as events captured in the footage, PO Bernard repeatedly answered that he did not recall. For instance, he denied recalling having § 87(2)(b) phone during the encounter and stated he could not explain why the footage shows him returning § 87(2)(b) cellphone to him. PO Bernard also denied having a recollection of ever calling § 87(2)(b) or of how he obtained § 87(2)(b) phone number; if he called § 87(2)(b) PO Bernard stated, § 87(2)(b) must have given him his phone number.

PO Chin was interviewed on March 12<sup>th</sup>, 2021, less than ten months after the two incidents. (PO Chin testified that, prior to his interview, and following PO Bernard's interview, the two officers had some discussion regarding the incidents, even though PO Chin and PO Bernard were assigned to different commands as of July 6<sup>th</sup>, 2020.) Regarding the May 21<sup>st</sup> incident, PO Chin testified that § 87(2)(b) was a willing participant in the encounter, and that he volunteered to provide information. He did not explain how the interaction with § 87(2)(b) began, nor how or why the subject of § 87(2)(b) providing information was raised. Generally, PO Chin testified that he could not recall many substantive details of the encounter – though, unusually, he recalled that § 87(2)(b) had a black eye, a relatively trivial observation. PO Chin testified that he had no recollection of the May 25<sup>th</sup> incident, even after being presented with footage of the incident. Like PO Bernard, PO Chin watched a video that is less clear than that in the concatenated footage. This video does not unequivocally capture PO Chin frisking and searching § 87(2)(b) or taking his cellphone.

It is highly unusual for an officer to not recall an investigative encounter that occurred so close in time to his or her CCRB interview. The typical, reasonable officer is generally able to recall, in some detail, one-off encounters in which she played a substantial role, including those which occurred even a year or more prior. In this case, not only was the May 25<sup>th</sup> incident significant in itself; it came just four days after a related and also significant interaction with § 87(2)(b). PO Bernard and PO Chin were each highly involved in the incident on May 25<sup>th</sup>. PO Bernard interacted with § 87(2)(b) at length in addition to searching his cellphone; PO Chin extensively frisked and searched § 87(2)(b). PO Bernard stated that he could not recall whether he'd ever stopped someone on the grounds of § 87(2)(b) or how often he'd taken law enforcement action there. He generally refused to testify or stated that he had no recollection in response to general questions about his law-enforcement activities. PO Chin and PO Bernard each denied that he would ever leverage an outstanding warrant or evidence of a crime against a civilian to compel him to cooperate, or generally pressure someone to provide information.

Under NYPD Administrative Guide 304-10, a misleading statement is a statement that is intended to misdirect the fact finder, and materially alter the narrative by intentionally omitting a material fact or facts, making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall, or have been aware of, such material facts. NYPD Administrative Guide 304-10 [BR 21].

PO Bernard and PO Chin's failure to document the incident, and their apparent concern of being videotaped, [REDACTED] § 87(2)(g)

[REDACTED] This is all the more so in PO Bernard and PO Chin's case, given that this was the officers' second significant encounter with [REDACTED] § 87(2)(b) in four days. PO Chin's testimony that he recalled the first incident but not the second is implausible, given the closeness in time and apparent connection between the two incidents. § 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- PO Bernard has been a member of service for six years, over which time he has been the subject of nine other cases and thirty three allegations, one of which was substantiated. § 87(2)(b)
  - Case 201602498 involved an allegation of premises entered and/or searched. The board recommended formalized training. The NYPD imposed no penalty.
  - Case 202004243, which involved three allegations of vehicle stop, remains under investigation.
  - Case 202004819 involves allegations of failure to provide RTKA card, stop, frisk, refusal to provide name, refusal to provide shield number, § 87(2)(g), § 87(4-b) [REDACTED]. The case remains under investigation.
- Sgt. Walter has been a member of service for eight years, over which time she has been the subject of six complaints and twenty seven allegations, none of which have been substantiated. § 87(2)(g) [REDACTED] Her summary of employment history was requested within the past six months, and has been added to the case file [BR 23].
  - Case 202002254, which involves allegations of frisk, search, vehicle search, and vehicle stop, remains under investigation to date.
  - Case 202004819, which involves allegations of failure to provide RTKA card, frisk, refusal to provide name, search, stop, refusal to provide shield number, and § 87(2)(g), § 87(4-b) [REDACTED] remains under investigation to date.
- PO Pukaj has been a member of service for five years, over which time he has been the subject of two complaints and three allegations, none of which was substantiated. § 87(2)(b) [REDACTED]

- substantiated. § 87(2)(g) His summary of employment history has been requested within the past six months, and has been added to the case file [BR 24].
- Case 201806761 involved an substantiated allegation of frisk. The board recommended command discipline-A and the NYPD imposed formalized training.
  - Case 202004819 involves allegations of failure to provide RTKA card (two), refusal to provide name, refusal to provide shield number, stop (two), and improper use of body-worn camera. The case has been closed -- with all allegations against PO Bernard either unfounded or unsubstantiated, § 87(2)(g), § 87(4-b)

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- There are no notices of claim related to this incident [BR 26].

Investigator:	<u>Will Rasenberger</u>	<u>Inv. Will Rasenberger</u>	<u>01/15/2022</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u>                    </u>	<u>Manager Vanessa Rosen</u>	<u>1/24/2022</u>
	Signature	Print Title & Name	Date
Reviewer:	<u>                    </u>	<u>                                </u>	<u>                    </u>
	Signature	Print Title & Name	Date